



50030044

*Dorming*  
*at Lynn*

# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

Salt Lake Field Office  
2370 South 2300 West  
Salt Lake City, Utah 84119  
ph: (801) 977-4300; Fax: (801) 977-4397  
www.blm.gov/ut



IN REPLY REFER TO:

3809

U-75737

(UT-023)

RECEIVED

JUL 14 2008

JUL 10 2008

DIV. OF OIL, GAS & MINING

Certified Mail Number-  
Return Receipt Requested

### DECISION

Mr. Russell Feller  
A & R Leasing, L.L.C.  
688 East Chad Ranch Road  
Veyo, Utah 84782-4141

43 CFR 3809

Plan of Operations Incomplete;  
Mineral Examination Report Required

On June 12, 2008, The Bureau of Land Management (BLM) received your Plan of Operations (Plan) for proposed mining activities on the Glacial Green #1 placer mining claim (UMC 361374) located in Section 8, T. 13 N., R. 13 W. Your submission, which has been assigned case file number U-77843, is incomplete.

Before we can accept your Plan as complete, you must provide this office with the information outlined in 43 CFR 3809.401, including but not limited to the following:

1. Your taxpayer identification number. This information will be retained in a locked cabinet at the Salt Lake Field Office and not be available for view by the public;
2. The name and BLM serial number of any mining claim(s) where surface disturbance would occur;
3. A description of the equipment, devices, or practices you propose to use during operations including, where applicable:
  - a) maps of the project area at an appropriate scale showing the location of mining activities, processing facilities, waste rock and tailing disposal areas, support facilities, structures, buildings, and access routes;
  - b) preliminary or conceptual designs, cross sections, and operating plans for mining areas, processing facilities, and waste rock and tailing disposal facilities;
  - c) water management plans;
  - d) spill contingency plans;
  - e) a general schedule of operations from start through closure; and
  - f) plans for all access roads, including plans for road upgrades, maintenance, pull-outs, etc.;
  - g) plans for water supply pipelines and power or utility services (if required);
4. Your interim management plan to manage the project area during periods of temporary closure to prevent unnecessary or undue degradation. This plan must include measures to stabilize excavations and workings, measures to isolate or control toxic or deleterious materials, provisions for the storage or removal of equipment, supplies and structures, measures to maintain the project area in a safe and clean condition, and plans for monitoring site conditions during periods of non-operation;

0002

5. A plan for reclamation to meet the standards in 3809.420 with a description of the equipment, devices, or practices you propose to use. You must also submit an estimate of the costs to fully reclaim your operation, as required at 43 CFR 3809.552. The BLM will review your reclamation cost estimate, based on a complete Plan, and notify you of any deficiencies or additional information which must be submitted in order to determine a final reclamation cost. BLM will notify you when we have determined the final amount for which you must provide financial assurance.

For your convenience, we have enclosed a copy of the BLM's Surface Management Regulations (43 CFR 3809). Refer to 3809.401 for the specific information that must be included in your Plan. Also enclosed is a copy of the BLM's *Suggested Format for Plan of Operations or Plan Amendment*.

Your Plan for proposed mining activities is for quartzite building stone. Quartzite is generally considered by the BLM to be a common stone that is widely found throughout the United States and may be used for a variety of purposes that other common mineral materials are suitable for. It is our opinion that you may be proposing to mine common variety mineral materials (salable minerals) under the auspices of the mining law. As described at 43 CFR 3711.1(b), "common varieties" include deposits which, although they may have value for use in trade, manufacture, the sciences, or in the mechanical or ornamental arts, do not possess a distinct, special economic value for such use over and above the normal uses of the general run of such deposits. On July 23, 1955, Public Law 167 (69 Stat. 368; 30 U.S.C. 611) was passed to prohibit further location of common variety minerals. The Act stated:

*No deposit of common varieties of sand, stone, gravel, pumice, pumicite, or cinders and no deposit of petrified wood shall be deemed a valuable mineral deposit within the meaning of the mining laws of the United States so as to give effective validity to any mining claim hereafter located under such mining laws.*

This means that mining claims located after July 23, 1955 for common variety mineral materials may not be valid, and the removal of common variety minerals from such claims under the auspices of the mining law may be considered to be a trespass. Common variety mineral materials are normally sold under BLM's Mineral Material Disposal regulations (43 CFR 3600).

For minerals to be uncommon, and therefore locatable under the Mining Law of 1872, they must meet the following criteria, as cited in *McClarty v. Secretary of Interior*, 408 F. 2d. 907, 908 (9<sup>th</sup> Cir. 1969):

1. There must be a comparison of the mineral deposit in question with other deposits of such minerals generally;
2. The mineral deposit in question must have a unique property;
3. The unique property must give the deposit a distinct and special value;
4. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
5. The distinct and special value must be reflected by the higher price which the material commands in the market place, or by reduced cost of overhead so that the profit to the claimant would be substantially more.

Although we are requesting additional information from you to complete your Plan, we cannot approve it until a mineral examination report has been prepared to determine whether or not the subject quartzite is locatable or salable. The examination will encompass mapping the geology and mineralization of the mining claim, and sampling to quantify and qualify the deposit. All data collected will be used to conclude in a mineral validity examination report whether the quartzite is a common variety mineral or uncommon, and therefore locatable. In the event that the quartzite is determined to be common variety, a contest complaint will be issued.

As part of the mineral validity examination process you may be requested in the future to provide the BLM with any supporting information you may have related to the mineral deposit such as production data, mining cost information, and sales and marketing data. You may also be requested to provide any information you have regarding the extent or physical character of the mineral deposit such as drillhole or geophysical data. Any such information you provide to BLM which you request to be kept confidential will only be made available to mineral examiners assigned to this case.

For your information, on October 7, 2005, the BLM published a final rule in the Federal Register to impose new fees to cover BLM's costs of actions such as completing validity examinations. Because we believe you may be proposing to mine common variety mineral materials from your mining claim, a validity examination would need to be prepared before the subject Plan could be approved. You would be required to pay all of the costs associated with preparing such a validity examination.

Until the mineral examination report has been completed, the BLM may give an interim authorization of the Plan for your proposed operations to remove possible common variety minerals if you establish an escrow account in a form acceptable to the BLM. You must make regular payments to the escrow account for the appraised value of possible common variety minerals removed under a payment schedule approved by the BLM. For your information, the current appraised value of common variety mineral materials similar to those you wish to produce is \$12.50 per ton. The funds in the escrow account would not be disbursed to you, or to the U.S. Treasury, until a final determination of whether or not the mineral is a common variety, and therefore salable under BLM's mineral material disposal regulations at 43 CFR 3600, has been made. If the mineral examination report concludes that the minerals are common variety minerals, you may either relinquish your mining claim or BLM will initiate contest proceedings. Upon relinquishment, or final departmental determination that the mining claim is null and void, you must promptly close and reclaim your operation unless you are authorized to proceed under mineral material disposal regulations at 43 CFR 3600.

Please submit the requested information within 60 days of receipt of this letter. If we do not receive the requested information from you, we will close the subject case file and require you to reclaim the site. Reclamation would have to be conducted according to the standards described in your August, 1997 Notice application. This includes stabilization of the highwall by backfilling to 45 degrees or less, reshaping the land to near its original contour, and redistributing the topsoil and overburden. The entire length of the access road, from the pit down to the switchback would also need to be reclaimed. Finally, the reclaimed areas would need to be ripped, harrowed, or disked, then reseeded.

If you do not agree and are adversely affected by this decision, in accordance with 43 CFR 3809.804, you may have the Utah BLM State Director review this decision. If you request a State Director review, the request must be received in the Utah BLM State Office, P.O. Box 45155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive this decision. A copy of the request must also be sent to this office. The request must be in accordance with the provisions provided in 43 CFR 3809.805. If a State Director review is requested, this decision will remain in effect while the State Director review is pending, unless a stay is granted by the State Director. Standards for obtaining a stay are given below. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the Utah State Director does not make a decision on whether to accept your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You then have 30 days in which to file your notice of appeal with the IBLA (see procedures below).

If you wish to bypass the State Director review, this decision may be appealed directly to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Salt Lake Field Office within 30 days of receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to regulations 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of this notice of appeal and petition for a stay must also be submitted to each party named in the decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

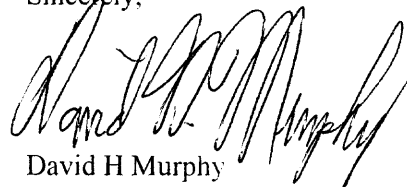
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

1. The relative harm to the parties if the stay is granted or denied.
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

If you have any questions, or require additional information, please contact Stephen Allen of my staff at (801) 977-4360.

Sincerely,

A handwritten signature in black ink, appearing to read "David H. Murphy". The signature is fluid and cursive, with the first name "David" and last name "Murphy" being the most prominent parts.

David H Murphy  
Assistant Field Manager  
Nonrenewable Resources

Cc: Lynn Kunzler UDOGM.  
UT 923 (Mike Ford)